

REMARKS

Claims 1, 9, 14 and 16 are pending in this application. Claims 1, 9, 14 and 16 stand rejected.

Claims 1, 9, 14 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With regard to claim 1, the “primary sauce layer” is the same as the “sauce layer.” Therefore, we have amended claim 1 to delete the phrase “wherein a primary sauce is applied thereon,” which will clarify the claim.

With regard to claim 9, we note that, grammatically, lines 5-8 of claim 9 in the previous amendment recite that in the first freezing step, “a water migration-preventing layer ... is formed on the surface of the thus treated rice grain or pasta piece” The phrase “thus treated” refers to the result of the primary sauce mixing step. Therefore, we believe that this recitation is clear: the water-migration preventing layer is a separate layer, and is formed on a surface which clearly is made of the rice or pasta admixed with primary sauce.

Since the meaning of “frozen with the primary sauce” refers to the second member of the recited Markush group: “a mixture of starch and oil frozen with the primary sauce,” it is a redundant recitation of the primary sauce of the first step. Accordingly, we deleted this recitation.

The Office Action also cites claim 9, line 10, which recites: “having a sugar content (Brix) of 0 to 25°, which is lower than that of the primary sauce ...” The Office Action states that the ranges of sugar content of the primary sauce and secondary sauce overlap. We believe that it may

have misunderstood that the “which is lower” clause was an additional limitation. For clarity, we have amended the claim to insert --and-- before “which is lower.”

Claims 1, 9, 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scherpf et al. in view of Monte (U.S. Patent No. 5,789,008).

Scherpf et al. is cited for disclosing a process in which an intermediate coating of a solid or liquid food-acceptable fatty material is applied to the cooked pasta before the pasta is frozen. This apparently refers to column 4, lines 11-29, of the reference. The Office Action, page 3, text lines 14-16, states that Scherpf et al. does not disclose starch or a mixture of starch and oil as the “water-migration layer” and cites Monte as teaching this layer.

Specifically, the Office Action, page 3, text lines 17-18 states that “Monte teaches to apply both oil and starch as a membrane separating the ice cream from the cookies.” We note that Monte does state that “The cookies resist migration of moisture from the ice cream and remain crisp during storage. An edible oil and food membrane on the cookies prevents moisture in the ice cream from being absorbed by the cookies.” (Abstract). The membrane is disclosed in column 2, lines 43-45, and the process is detailed in column 3, lines 38-52. The membrane can be rice starch paper or potato starch paper, as disclosed in column 4, lines 21-30.

We note that column 4, lines 26-27, states:

The rice starch paper and other starch membranes noted above ordinarily are comprised substantially of starch, but include small amounts of protein, include binders, etc. Such membranes comprised of starch are readily available in commerce.

That is, it is clear that the term “membrane” in Monte refers to a specific item which may be paper. This membrane is “pressed against the oil” (column 3, line 51). That is, Monte’s membrane cannot be applied by a coating process such as in Scherpf et al. It is an already formed membrane that must be pressed down.

Monte’s disclosure of oil with a starch membrane, although it does serve as a water migration-preventing layer, does not allow for combination with Scherpf, since Scherpf’s apparatus cannot apply a membrane. While Monte specifically teaches use of a membrane, there is no teaching in Monte to suggest that the desired effect could be achieved by any coating process such as would be conducted by Scherpf’s apparatus.

Moreover, Monte specifically teaches the prevention of migration of moisture from ice cream to cookies. There is no suggestion in Monte that this would be applicable to sauce on rice or pasta.

Because the paper layer of Monte does not suggest the structurally completely different coating layer of Scherpf, there logically can be no suggestion of obvious to the skilled artisan. The rejection fails because the combination of Scherpf and Monte yield no logical teaching.

Finally, we note that Monte’s disclosure involves an oil layer and a membrane layer. Although the membrane layer could be considered to be a layer comprising starch, Monte does **not** disclose a mixture of starch and oil in one layer. New claims 17 and 18 limited to the “mixture of starch and oil”, and not referring to separate layers of starch and oil, therefore further distinguish, from Monte.

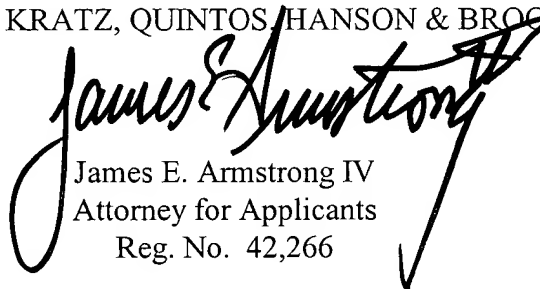
In view of the aforementioned amendments and accompanying remarks, claims, as amended, are in condition for allowance, which action, at an early date, is requested.

If, for any reason, it is felt that this application is not now in condition for allowance, the Examiner is requested to contact Applicants undersigned attorney at the telephone number indicated below to arrange for an interview to expedite the disposition of this case.

In the event that this paper is not timely filed, Applicants respectfully petition for an appropriate extension of time. Please charge any fees for such an extension of time and any other fees which may be due with respect to this paper, to Deposit Account No. 01-2340.

Respectfully submitted,

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